

Message Text

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ACTION OPIC-12

INFO OCT-01 ARA-11 ADP-00 AID-20 CIAE-00 COME-00 EB-11

FRB-02 INR-09 NSAE-00 TRSE-00 XMB-07 CIEP-02 LAB-06

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FM AMEMBASSY CARACAS

TO SECSTATE WASHDC PRIORITY 9054

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E. O. 11652 N/A

TAGS: ECON VE

DEPARTMENT PLEASE PASS OPIC AND COMMERCE

SUBJECT: OPIC INVESTMENT INSURANCE- CHAMPION SPARK PLUGS

REF: A. STATE 40570; B. CARACAS 2009

SUMMARY: EMBASSY RECOMMENDS AGAINST GRANTING INVESTMENT
INSURANCE

FOR APPLICATION OF CHAMPION SPARK PLUGS AT THIS TIME. EMBASSY
BELIEVES THAT REASONS FOR SUSPENDING PROCESSING OF NEW INVESTMENT
INSURANCE APPLICATIONS- NAMELY UNCERTAINTIES SURROUNDING IMPLI-
MENTATION OF DECISION 24 OF ANDEAN PACT AND ABSENCE OF TREATY OR
EXCHANGE OF NOTES ESTABLISHING PROCEDURES FOR RESOLVING DISPUTES
BETWEEN INSURED COMPANIES AND VENEZUELAN GOVERNMENT- ARE
APPLICABLE TO THIS PARTICULAR CASE. END SUMMARY

1. REF CLEARLY STATED IMPORTANCE OF EFFECTIVE DATE OF DECISION 24
FOR THIS AND OTHER PENDING APPLICATIONS. ALTHOUGH THERE ARE INDI-
CATIONS (REF B) THAT DECISION 24 MAY NOT BECOME EFFECTIVE FOR
FOREIGN COMPANIES OPERATING IN VENEZUELA UNTIL DATE DURING PERIOD
APRIL- DECEMBER 1973, THIS OUTCOME IS FAR FROM CERTAIN. THE DATE
COULD BE ESTABLISHED AS 1971 THROUGH EXECUTIVE INTERPRETATION OR
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CONGRESSIONAL ACTION. A DECISION TAKEN BY OPIC TO GRANT INVESTMENT INSURANCE IN ANTICIPATION OF ESTABLISHMENT OF A 1973 EFFECTIVE DATE COULD THUS PLACE OPIC'S GUARANTEES IN DIRECT CONFLICT WITH VENEZUELAN GOVERNMENT POLICY. MOREOVER, VENEZUELAN GOVERNMENT MAY ENACT, THROUGH EXECUTIVE ORDER OR CONGRESSIONAL ACTION, ADDITIONAL REGULATIONS ON FOREIGN INVESTMENT.

2. SINCE POSSIBILITY OF DISPUTES BETWEEN INVESTOR AND VENEZUELAN GOVERNMENT MIGHT THUS BE INCREASED, A TREATY OR AT LEAST AN EXCHANGE OF NOTES WITH VENEZUELA WHICH ESTABLISHES PROCEDURES (BE THEY CONCILI-

ATION OR ARBITRATION) FOR SETTTLING SUCH DISPUTES IS ESSENTIAL. AS EXPLAINED BY OPIC VICE PRESIDENT POATS DURING HIS FEBRUARY 28 VISIT HERE, DECISION 51 OF ANDEAN PACT AND CALVO DICTRINE BOTH POSE SERIOUS QUESTIONS CONCERNING DISPOSITION OF VENEZUELAN GOVERNMENT TO RECOGNIZE OPIC'S RIGHTS TO SUCCESSION AN SUBROGATION. ANY INVESTOR-GOV DISPUTES WHICH CANNOT BE EASILY RESOLVED WOULD THEREFORE LIKELY RESULT ULTIMATELY IN A BILATERAL DISPUTE BETWEEN THE US AND VENEZUELAN GOVERNMENTS.

3. VENEZUELAN GOVERNMENT'S EVENTUAL DETERMINATION OF DATE IN WHICH AN ENTERPRISE IS CONSIDERED " ESTABLISHED" FOR PURPOSE OF EXEMPTION UNDER ARTICEL 30 OF DECISION 24 IS ALSO UNCERTAIN. ANY OF THREE DEFINITIONS OF " ESTABLISHED" OFFERED IN REF A COULD BE ADOPTED BY VENEZUELAN GOVERNMENT. IF EFFECTIVE DATE IS ESTABLISHED AS 1971. VENEZUELAN GOVERNMENT WOULD THEN PRESUMABLY HAVE TO DETERMINE HOW IT WILL TREAT INVESTMENTS TO WHICH COMPANIES WERE COMMITTED OR HAD ACTUALLY REALIZED BETWEEN EFFECTIVE DATE AND SIGNING OF LIMA AGREEMENT. THIS DETERMINATION WOULD ONLY SEEM NECESSARY, HOWEVER, IF THE EFFECTIVE DATE IS ESTABLISHED AS 1971. ATTEMPTS TO SEEK CLARIFICATION FROM VENEZUELAN OFFICIALS AT THIS TIME COULD PE PREMATURE AND MIGHT NOT REPRESENT CONSENSUS IN VENEZUELAN GOVERNMENT.

4. EMBASSY THEREFORE RECOMMENDS THAT OPIC SUSPEND DECISION ON GRANTNG INVESTMENT INSURANCE FOR ABOVE APPLICATION OF CHAMPION SPARK PLUGS UNTIL EFFECTIVE DATE AND IMPLEMENTING REGULATIONS FOR DECISION 24 HAVE BEEN FINALLY DECIDED BY VENEZUELAN GOVERNMENT. IF EFFECTIVE DATE IS SET AS 1971 EMBASSY WOULD RECOMMEND AGAINST GRANTING INSURANCE (IN ABSENCE OF ESTABLISHED MECHANISM WHICH WOULD PROTECT U. S. GOVERNMENT INTERESTS). IF DECISION 24 BECOMES EFFECTIVE DURING 1973 THE MORE IMPORTANT QUESTION WOULD SEEM TO LIMITED OFFICIAL USE

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BE A FACTUAL DETERMINATION AS TO WHETHER OR NOT THE INVESTMENT (OR COMMITMENT TO INVESTMENT) TOOK PLACE BEFORE THE EFFECTIVE DATE. IF INVESTMENT TOOK PLACE PRIOR TO EFFECTIVE DATE, AND EFFECTIVE ARBITRATION PROCEDURE WERE ESTABLISHED, EMBASSY COULD THEN RECOMMEND APPROVAL OF APPLICATION. IN INTERVAL, CHAMPION SPARK PLUGS COULD STILL MAINTAIN ITS APPLICATION IN ACTIVE STATUS.

5. IF DECISION IS TAKEN TO PROCEED WITH CHAMPION SPARK PLUGS APPLICATION, EMBASSY UNDERSTANDS CLARIFICATION OF COVERAGE OF ROYALTIES MAY BE NEEDED. JAQUISS OF BUJIAS CHAMPION DE VENEZUELA HAS INDICATED TO EMBASSY THAT IN ORDER TO GET WRITTEN STATEMENT FROM MINISTRY OF DEVELOPMENT THAT ROYALTY PAYMENTS WERE CONSIDERED IN DETERMINING HOST GOVERNMENT APPROVAL, EMBASSY WOULD HAVE TO REQUEST SUCH A STATEMENT. JAQUISS HAS ALSO INDICATED THAT BUJIAS CHAMPION WILL LIKELY STUDY FURTHER DESIRABILITY OF TRADING WITH OUTER PACT COUNTRIES (WHICH WOULD REQUIRE DISINVESTMENT.) ALTHOUGH PRIMARY EXPORT MARKET FOR COMPANY IS CONSIDERED TO BE CARIBBEAN AREA, COMPANY MIGHT DECIDE TO MEET COMPETITION IN ANDEAN COUNTRIES.
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